

AN ORDINANCE

Hand Shook

05-0-0848

BY COUNCILMEMBER HOWARD SHOOK

AMENDING SECTION 138-24 OF THE CITY OF ATLANTA'S CODE OF ORDINANCES BY INSERTING THE DEPARTMENT OF WATERSHED MANAGEMENT WHEREVER APPROPRIATE SINCE THIS DEPARTMENT IS NOW RESPONSIBLE FOR THE SITE DEVELOPMENT RESPONSIBILITY IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: That Chapter 138, Article 1 Streets, Sidewalks and other Public Places be amended by inserting the language as indicated.

Sec. 138-24. Conditions of permit.

(a) Encroachment agreement. It shall be prohibited and shall be unlawful for any person to erect or maintain any temporary or permanent right-of-way encroachment in the city, unless that encroachment is covered by an encroachment agreement administered by the Department of **Public Works and/or Department of Watershed Management**.

(b) The city will not enter into an encroachment agreement to any owner of property adjacent to any street or roadway that is part of the street system of the city or right-of-way along the limited-access highways of the federal or state aid road system within the city limits or any agent or contractor employed by the owner to make changes to, to alter or to construct an encroachment over, upon or under the right-of-way unless:

(1) Changes to benefit public. In the opinion of the commissioner of the **Department of Public Works and/or Department of Watershed Management** the proposed alteration, excavation or encroachment will constitute a benefit to the public and, except for permitted temporary disruptions of service, will not adversely impact the ability of the right-of-way to handle vehicular or pedestrian traffic or otherwise to perform their intended function.

(2) Agreement as a condition of a permit. The owners of the adjacent or connected properties abutting the right-of-way seeking a permit to alter, excavate or encroach on the right-of-way enter

an agreement with the city, which agreement shall be binding upon the owners of the property abutting the right-of-way and their successors in title in perpetuity or until the agreement is ended by mutual consent of the city and the agreeing parties and which will provide but is not limited to the following:

- (3) Submission of plans and technical specifications. All alterations, excavations or encroachments permitted on, in, over, under or within the public right-of-way of the city shall be pursuant to a plan, calculations and technical specifications prepared by a professional engineer licensed to practice in the state, which plans, calculations and technical specifications have been approved by the commissioner of **the Department of Public Works and/or Department of Watershed Management** pursuant to the standards set forth in this chapter or promulgated pursuant to this chapter and, when applicable, the standards of state department of transportation or the federal highway administration or both. Minimally, the plans should show the location of any supports, the height or depth of the structure and the width and volumetric cubic feet of the structure, where applicable.
- (4) Performance bond as a condition of a permit. When in the opinion of the commissioner of **the Department of Public Works and/or Department of Watershed Management** it is deemed appropriate and prior to beginning any work on, in, over or under the public right-of-way of the city, the owner of the abutting property or the contractor employed by the owner to perform the work shall present to the city a performance and completion bond for the full value of the work contemplated furnished by a corporate surety satisfactory to the city, the amount of the surety being determined by the city's risk manager to be adequate to either complete the proposed work impacting the public right-of-way in its entirety or to restore the public right-of-way to its condition prior to commencement of the work if the owner or the owner's contracting agent fails to complete the work to the satisfaction of the commissioner of the **Department of Public Works and/or Department of Watershed Management**.
- (5) Indemnification insurance as a condition of a permit. Evidence of insurance shall be issued to indemnify and hold harmless the city, its agents, officers and employees from all claims arising out of any injury to persons or damage to property resulting from the changes to or work on, in, over, under or within the right-of-way by the property owner or the contractor employed by the owner or any of the agents or employees of the owner or contractor.
- (6) Signatures required of all parties to agreement. All parties required for the execution of such agreement shall be signatories thereto, as evidenced by a title certificate of an attorney licensed to practice law within this state, which title certificate sets forth the names and addresses of the owners of the property or structures to be connected by the bridge or tunnel and the names and addresses of the lessors and lessees of the property or structures, together with sufficient information as to the terms of any leases of the property or structures and the corporate names of any parties.

(7) Obligation to replace the area beneath the street. The granting of permission to construct an encroachment or excavation on, in, over, under or within any public street or public alley within the city shall be contingent upon the agreement of the owner and the lessor of the tracts of land adjacent to the street or alley affected by the encroachment or excavation to remove the encroachment or excavation and to replace any area beneath the street or alley where the encroachment or excavation is constructed to a condition satisfactory to the city within 90 days after being notified to do so by the commissioner of **the Department of Public Works and/or Department of Watershed Management** without cost to the city and to provide security, if requested to do so by the city, to ensure that the encroachment or excavation will be removed or backfilled and the area returned to a condition satisfactory to the commissioner of **the Department of Public Works and/or Department of Watershed Management** without the cost to the city.

(8) Performance bond required to replace the area beneath the street. The granting of permission for an encroachment or construction of an excavation on, in, over, under or within any public street or public alley within the city shall be contingent upon an agreement by the owner or lessee of the building or property to furnish and maintain a bond, at no expense to the city, with a corporate surety satisfactory to the city, to guarantee the performance of the principal in removing the encroachment or backfill the excavation as provided for in subsection (7) of this section.

(9) Annual rental of space. The granting of permission to construct the encroachment or excavation on, in, over, under or within any public street or public alley within the city shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land connected by the encroachment or excavation to pay to the city an annual rental for the space occupied by the encroachment or excavation at a rate per cubic foot as determined by the council, computed on the outside dimensions of the encroachment or excavation lying within the bounds of the public right-of-way of the city, which rental shall be collected by the department of finance and shall be subject to change from time to time. For rental of less than 5,000 cubic feet, the commissioner of **the Department of Public Works and/or Department of Watershed Management** may require one year's rental payments in advance.

(10) Public liability insurance requirement as a condition of a permit. The granting of permission to construct an encroachment or excavation on, in, over, under or within a public street or public alley of the city shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land permitted by the city to effectuate the encroachment or excavation to hold the city harmless from any and all claims arising out of the construction, operation, use, maintenance or removal of the encroachment or excavation and upon the additional agreement of the owners or lessors or lessees to maintain a policy of public liability insurance, at no expense to the city, satisfactory to the city and naming the city as a named insured, in an amount approved by the city's risk manager. The agreement of the owners or lessors or lessees of the tracts of land to hold the city harmless shall not be limited to the amount of the insurance.

(11) Non-waiver of city negligence. The granting of permission to construct an encroachment or excavation shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land permitted by the city to effectuate the encroachment or excavation that the obligation to hold the city harmless against all claims arising out of the construction, operation, use, maintenance or removal of the encroachment or excavation shall not be waived by the city because of the commissioner of **the Department of Public Works and/or Department of Watershed Management** having approved by the plans and specifications for the encroachment or excavation or by the requiring or not requiring modifications thereto, even though the city may be found to have been negligent as a matter of law because of its acts or failure to act in regard thereto.

(12) Locating all pre-existing public and private utilities. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the city shall be contingent upon the parties' seeking permission to construct the encroachment or excavation, determining at their expense the location of all aboveground and below ground public utilities and private utilities of the city in the area where the encroachment or excavation is to be constructed, and making arrangements for the removal or relocation of those utilities, at the expense of the parties seeking permission to construct the encroachment or excavation and at no expense to the city.

(13) Compliance with this chapter. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the city shall be contingent upon the agreement of the parties seeking permission to construct the encroachment or excavation to comply with all the terms of this chapter and to comply with all other ordinances and regulations of the city.

(14) Reimbursement of damages to city. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the city shall be contingent upon the agreement of the parties seeking permission therefore to repair any damage to the street or alley resulting from the construction, maintenance or use of the encroachment or excavation and to reimburse the city for any damage to the street or alley beneath, on or above where the encroachment or excavation is constructed, because of that construction and during the construction, use and maintenance of the encroachment or excavation.

(c) Enforcement. The police chief shall, upon request of any citizen or upon the request of the commissioner of public works, give notice to the owner of the property which may be encroachment that the owner may be in violation of this section. Alternatively, the commissioner of **the Department of Public Works and/or Department of Watershed Management** may give notice of violation to the owner. The owner shall then be allowed 30 days to resolve the conflict by removing the encroachment, entering into an "encroachment agreement" with the city, or by demonstrating to the satisfaction of the commissioner of **the Department of Public Works and/or Department of Watershed Management** that the structure or property in question is not

in violation. Failing compliance, the owner shall be cited to appear before the judge of the municipal court for a hearing on the charge of violation of this section. Upon finding that this section has been violated, the owner may be required by the court to remove the encroachment within a time prescribed by the court or the commissioner of **the Department of Public Works and/or Department of Watershed Management** shall be authorized to remove the encroachment and the cost of removal shall be a lien against the property.

(d) Penalties. Any violator of this section shall be held accountable as provided in the penalty section of this chapter. Each day of continuation of violation after notice shall constitute a separate offense.

SECTION 2: That all ordinances and parts of ordinances in conflict herewith be and the same are hereby waived.